TIGER

TRANSFORMATION, INTEGRATION and GLOBALIZATION ECONOMIC RESEARCH
CENTRUM BADAWCZE TRANSFORMACJI, INTEGRACJI I GLOBALIZACJI

TIGER Working Paper Series

No. 70

New Immigration Policy in Europe

Andrzej Bolesta

Warsaw, December 2004

Advisor to the Head of the Parliament of the Republic of Poland, Research Assistant in the Transformation, Integration and Globalization Economic Research (TIGER) institute (www.tiger.edu.pl) and Lecturer of the Leon Kozminski Academy of Entrepreneurship and Management (www.kozminski.edu.pl) E-mail: bolesta@tiger.edu.pl

Andrzej Bolesta

New Immigration Policy in Europe

Summary

European countries have been erecting thick walls aimed at preventing unwelcome guests from entering. The institutional, legal and even physical barriers are have the intention of stopping flows of political and economic migrants who try to make their way to the imaginary dreamland of a welfare state. All these regulations carry the label of "New Policy", and the continent itself has been called "Fortress Europe". At the same time states of the European Union are consolidating their powers in creating a common unified immigration policy.

This paper analyses both: the "new policy" and the process of unification of the immigration regulations in the EU. It goes back in time showing the emergence of immigration policy regimes. Moreover, it tries to bring to light the barely existent "tackling of root causes".

1. Introduction

In the last dozen or so years, Western European countries have changed their attitudes and taken energetic measures to address the phenomenon of migration. The member states of the European Union have been harmonizing and unifying their immigration policies, which give rise to instruments that regulate the transborder movements of people, and asylum policies, involving regulations and instruments aimed at potential refugees. The national policies are becoming increasingly restrictive. It is a generally held view that the current measures concentrate on restricting migrants' opportunities to move into the European territory. 'Fortress Europe' has already become a household term.

In the context of the existing trends and the general sentiments of international public opinion, some questions are in place. What are the new immigration and asylum policies in Europe like? What instruments are used by the European Union in connection with the migration movements? Do we see a 'Fortress Europe' being erected that will be an efficient barrier against the influx of refugees?

2. History of the European Immigration and Asylum Policies

People have migrated from time immemorial. In modern Europe, political refugees made their appearance long before the international community noticed this problem. The expulsion of the Jews from Spain (15th century) or the Huguenots from France (17th century) are the best-known historical examples of political persecution.

The 19th century initiated a 'new migration epoch' (Zolberg 1997: 286) in view of the major increase in migration movements, especially between Europe and North America; it also brought about the first state regulations pertaining to migration streams. The advent of the 'new migration epoch' was made possible by the advancement of technology, and in particular, the development of new means of transport and the transportation infrastructure. Around the turn of the 19th century, a considerable expansion of the railroad network took place.[1] Intercontinental transport by sea gained popularity. After the introduction of steamships, people could move from Europe to America in greater numbers and in a shorter time. Consequently, a major outflow of population from Western Europe ensued. At the same time the industrial revolution boosted the demand for workforce, while the changing patterns of family life (fewer children) restricted its supply. Western European countries were thus forced to pursue a liberal immigration policy, so as to attract new labour, while taking a more restrictive stand – especially in the first half of the 19th century – on emigration. The end of the 19th century witnessed larger-scale movements within Europe, too: the Flemish and Italians would move to France, the Swedes to Denmark, the Finns to Sweden, the Italians to Switzerland, the Poles to Germany (Zolberg 1997: 285). The transformation of the Western European countries, the development of industry and the increased migration volumes within the continent resulted in the gradual dwindling of trans-Atlantic movements.

The liberal immigration policy and dynamic economic development, which guaranteed a constant supply of new jobs, attracted foreign labour, especially from Central and Eastern Europe, which began to cause apprehensions and tensions among the native populations. As a result, Germany legally restricted immigrants from using their own language in official contexts. In 1905, Great Britain passed a law on immigrants, allowing the authorities to deny entry to certain groups of persons (Zolberg 1997: 299; Layton-Henry 1994: 282). From 1914, entrants were required to have passports and obligatory control by immigration officers was

---

[1] Great Britain expanded its railroad network from 21,558 km in 1871 to 32,623 km in 1913, Austro-Hungary from 6,112 to 22,981, Russia from 10,731 to 62,300, Norway from 359 to 3,085, Italy from 6,429 to 18,873, the United States from 85,170 (1870) to 386,714 (1910), Canada from 4,211 to 39,799 (Zolberg 1997: 282).

introduced. Subsequently, the laws pertaining to migrants became consolidated in the Alien Act (1920) (Layton-Henry 1994: 282). The next, increasingly large migration waves led to further tightening of the regulations in several stages, so that 'by the 1920s most states had erected solid walls, with narrow gates to let in specific categories [of migrants]' (Zolberg 1997: 294). An important role was played in this process by refugees from Russia, then engulfed in the Bolshevik Revolution, who acted in part as a catalyst of the emergence of the international refugee regime (Suhrke 1998a). The number of refugees further increased as a result of persecution in Nazi Germany. In order to keep the labour within the Third Reich, a decree on foreigners was promulgated (1938) which prohibited, among others, citizens of 'enemy states' from leaving the country.

After the Second World War, the numbers of migrants remained high. It was a consequence of several factors. First, following the resettlement during the war and the shifting political borders in Europe afterwards, many people were on the move to their old or new domiciles. Second, rapid economic growth in Western Europe created a surplus of jobs vis-à-vis the available labour resources. Third, integration mechanisms started to operate as a result of the signing of the Treaty Establishing the European Community (Treaty of Rome, 1957). Fourth, migration became increasingly globalised, partly because of the progress of civilization and partly because of the full institutionalisation of refugee status on an international scale.

Remembering the atrocities of the Second World War and its legacy of tens of millions of the resettled, the international community decided to face the issues of migration and, in particular, refugees. The developments in the Middle East accelerated the steps to provide international legal protection for refugees. The Convention Relating to the Status of Refugees was adopted (Geneva, 1951), followed by the 1967 Protocol (New York). The office of the UN High Commissioner for Refugees was established (1951). Provisions relating directly to migrants also became included in the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and the Universal Declaration of Human Rights (1948).

Whereas the vast majority of international norms concerned political refugees, whose problems received considerable interest in Western Europe in the late 1940s and early 1950s, attention shifted later on to the creation of immigration policies in the context of regulating the influx of economic migrants from abroad. The main target countries for immigrants were the former colonial empires – France and Great Britain – as well as Germany, in view of its rapid economic development. Because of their size and potential, these countries were capable of assimilating the greatest number of newcomers. Initially, the main source of migrants were the colonies or former colonies. In the 1950s, the demand for additional labour in the quickly expanding British economy was satisfied by the Irish and immigrants from the New Commonwealth: mainly coming from the West Indies (the Caribbean), India and Pakistan (Layton-Henry 1994). Migrants coming to Germany originated mainly from European states (Yugoslavia, Italy and Turkey), and those arriving in France came from the Maghreb and the colonies in West Africa.

France decided to incorporate the provisions of the Geneva Convention into its constitution in 1958 (Art. 55). The main legal act pertaining to foreigners was Ordinance No. 45-2658 from 1945. Furthermore, Ordinance No. 52-893 (of July 25, 1952) established the OFPRA (Office Français de Protection des Réfugiés et Apatrides, that is, the French Office for the Protection of Refugees and Stateless Persons) (Lambert 1995: 114). Germany introduced the right to asylum into its Basic Law, whose Article 16 grants this right to persons persecuted on political grounds.

Restrictions on immigration started to appear already in the 1960s – for instance, Great Britain restrained the right of entry for nationals of some Commonwealth countries (Layton-

Henry 1994); in 1965, Germany promulgated a law on foreigners which notably curtailed their rights (Esser and Korte 1985: 170). However, this trend acquired significant proportions only in the 1970s, as a result of the deteriorating economic climate and the recession triggered by the oil crisis of 1973. The British Immigration Act (1971) divided immigrants into those who had the right of residence in the United Kingdom and those devoid of this right, while giving the government full control over immigration issues. The decision-making powers pertaining to potential refugees became delegated to immigration officers, rather than competent authorities capable of verifying an immigrant's application. In Germany, the turnaround came in 1973, giving rise to a conflict. Christian Joppke (1998: 124) believes this conflict had two dimensions: territorial (local vs. federal authorities) and ideological (left vs. right). In 1978–91, no less than eight federal laws were passed, aiming to simplify the asylum procedures (Joppke 1998: 125), as the complexity of the regulations and the existence of multiple decision-making levels allowed potential refugees to protract court proceedings.

3. Migration as a Threat to Europe: Tackling the Root Causes

Migrations have always been seen as a threat. The only thing that changed was the intensity of this perception. The decision-making centres in the European Union countries have long been ill-disposed towards migrants and the immigration policy they have pursued – allegedly dictated by security concerns – reflects this perceived threat.

Security, however, as Weiner observes, 'is an elusive concept that calls up government's concerns to protect their territory and population against threats to the stability of the regime, the social well-being, or to the important societal values of the country' (Weiner 1995: 131). Indeed, the decisions of national leaders based on a vague, unclear and philosophically distant concept, obscure to the majority of society, must be defective by their very nature. Potentially faulty as they are, such decisions are nevertheless taken and may even enjoy a broad social support.

Refugees are perceived as a threat to the ethnic and cultural identity of the host society. Arriving, as most of them do, from a different cultural sphere, they bring along different mores and often different value systems, which distinguish them from the rest of society. A different ethnic and cultural background is in itself a cause of psychological anxiety and discomfort, inspiring dislike. A highly adverse role is played here by the political centres which point fingers at aliens as a threat to identity.

However, threatened identity is not the greatest worry of the modern and liberally oriented societies of Western Europe. Political refugees are seen in the first place as a financial burden to the state, and, consequently, to the taxpayers. The societies of Western Europe have developed extensive social security systems, under which many persons are eligible for benefits. The large majority of refugees do make use of these entitlements. Regardless of the actual cost of facilitation, this situation creates an enormous psychological impact. Immigrants are seen as contenders for state funds. Although, nominally, refugees do not normally represent a major strain on the state budget, they do receive much higher transfers than other groups of society on a per capita basis.

After September 11, 2001, immigrants are also perceived as a threat to the nation's physical security. There is a widespread, if largely unfounded opinion that potential terrorists stem from the developing countries, and thus immigrants from these countries pose a danger to the recipient states.

It is often claimed that a permanent solution to the problem of high migration levels is only possible through eliminating their causes. No doubt, unless energetic measures are taken to stop armed conflicts and prevent natural disasters on the one hand, and to ensure steady and rapid economic growth, which translates into better living standards for all social groups,

including the poorest ones, on the other, the influx of political and economic refugees will not diminish. The European Union has undertaken limited action in this field by promoting human rights and democracy, as well as stabilization and regional security, using financial incentives. In order to further the aims mentioned above, a number of projects have been initiated, such as the European Initiative for Democracy and Human Rights (EIDHR), the MEDA Democracy Programme (implemented in the framework of EIDHR) for 12 countries in North Africa and the Middle East, or the Cotonou Agreement, pertaining to the countries of sub-Saharan Africa, the Caribbean and the South Pacific. Separate programmes have been put into operation targeting the Balkans (CARDS Assistance Program to the Western Balkans, involving Albania, Bosnia-Herzegovina, Croatia, Serbia & Montenegro and Macedonia) and the former Soviet republics (TACIS). Of special importance for Europe, for security reasons, is the Euro-Mediterranean Partnership (in view of the large number of Muslim states in geographic proximity to Europe).

4. Harmonization and Unification of the European Union Policy on Asylum and Immigration

The harmonization of the immigration and asylum policies in the European Union should be seen as an element of ever-deepening integration. Even though the entry into force, as of May 1, 2004, of the provisions of the Amsterdam Treaty might seem to bring this task to successful completion – at least with respect to determining the scope of competence and responsibilities – the unification process will go on.

The Council of Europe was the only major organization on the continent to have addressed the problem of migration in the 1960s. The first document recommending the harmonization of immigration policies was issued in 1976, and a second one, entitled The Harmonization of National Procedure Related to Asylum, in 1981 (Joly 1996: 47).

In the mid-1980s, the European Economic Community decided to take the first short-term measures towards harmonizing the immigration policies of the member states. These were dictated by the following circumstances. First, as the integration of the EEC countries progressed, it was necessary to introduce common policies in various sectors and legal norms applying to the entire territory of the EEC, which inevitably entailed the transfer of diverse prerogatives of the national governments to the European institutions in Brussels. Given the trans-national and trans-territorial character of migrations, the EEC countries decided to begin harmonizing their immigration policies. An additional stimulus was provided by the prospect of internal borders being abolished, which would entail the freedom of movement within the entire territory of the Community. The abolition of borders was provided for by the Single European Act (1986). The first steps in this direction were taken by France, Germany, the Netherlands, Belgium and Luxemburg, which signed the Schengen Agreement (1985). Second, the 1980s saw a reorientation of the immigration policy of Western European countries. As economic growth slowed down, the demand for additional labour shrank. The labour market had become saturated and unemployment was on the increase. Moreover, as a result of changes in communist countries, a significant ideological factor, which guaranteed nearly automatically a refugee status to defectors from the East, began to lose importance. At the same time the globalisation of migration processes boosted the numbers of asylum seekers. The harmonization of immigration policies thus became necessary in order to control and regulate the influx of migrants.

The first meeting of the ministers responsible for immigration took place in London in October 1986. An Ad-Hoc Group on Immigration was created and asked to look at the following areas of concern:
- the improvement of checks at the external frontiers of the Community;
- the value of internal checks;
- the role of co-operation and possible harmonization of member states' visa policies in improving controls;
- the role and effectiveness of controls at internal frontiers in the fight against illegal immigration;
- the exchange of information about the operation of spot-check systems;
- close co-operation to avoid abuse of passports;
- measures to achieve a common policy to eliminate asylum abuse, in the consultation with Council of Europe and UNHCR;
- examination of ways in which Community travel can be improved without adding to the illegal immigration (Niessen 1996: 32).

Subsequently, a Centre for Information, Discussion and Exchange on Asylum (CIREA) was formed, along with a Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI). Other structures were created as well, whose terms of reference included some aspects of immigration, including: a joint assistance group and a coordinator group for the freedom of movement of persons (Szonert 1999).

The most important decisions aiming to give momentum to the harmonization and unification process were taken in 1990–93, as a result of the Maastricht Agreement (Treaty on European Union). Many suggestions were elaborated by the Ad-Hoc Group on Immigration. Before signing the Maastricht document, a number of declarations and conventions were prepared. In June 1990, the Dublin Convention was signed, which was intended to regulate the matters of responsibility for examining applications for refugee status. By precise designation of the country responsible for this procedure, this instrument was meant to eliminate the phenomenon of 'refugees in orbit', transferred from country to country without consideration being given to their application for asylum. Although the Convention did introduce some institutional order, it failed to solve the problem through the lack of specific executory provisions. Likewise drafted were the Convention on Crossing of External Borders and the Schengen Convention on the abolition of internal borders (1990). Furthermore, the European Council, meeting in Edinburgh, adopted a declaration on the principles for the external aspects of immigration policy, which advocated the following:
- the preservation and restoration of peace, and full respect for human rights and the rule of law, which would diminish migratory movements resulting from war and oppressive regimes;
- the protection and assistance of displaced people in the nearest safe area to their homes;
- the promotion of liberal trade and economic co-operation with countries of emigration, which would reduce economic motives for migration;
- targeting development aid and job creation, and the alleviation of poverty;
- efforts to combat illegal immigration;
- the conclusion of bilateral or multilateral agreements with countries of origin or transit, to ensure that illegal immigrants were returned to their home countries;
- the assessment of home countries' practices in readmitting their nationals after they are expelled from the territories of the member states (Niessen 1996: 46).

In the Treaty on European Union, which entered into force in November 1993, issues of the harmonization of immigration policies were accorded priority treatment. Pursuant to Art. K9, immigration policy can be delegated to Community structures, while Art. K1 stipulates that, among others, the following areas should be the object of a common policy:

- asylum policy;
- rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
- immigration policy and policy regarding nationals of third countries.

Between 1990 and 1997, several resolutions, motions and joint declarations were adopted which called for the harmonization of immigration policies and formulated common guidelines for the member states of the Community on various policy aspects. In London (1992), the definition was adopted of a 'manifestly unfounded claim' and a 'third host country', and the concept of a 'safe country' was worked out. A resolution on the harmonization of policies on the reunion of families was also passed (June 1993). Besides, a recommendation was formulated on policies towards countries substantially free from persecution and on matters of expulsion (December 1992), as well as one on illegal employment (June 1993). In 1994 and 1995, a procedural framework was created for the expulsion of candidates whose applications have been rejected. In 1993–6, solidarity principles in the event of a large influx of refugees were worked out. In June 1995, the Council of Ministers responsible for immigration adopted a resolution setting out the rights and responsibilities related to asylum procedures, and in March 1996, a common definition of refugees for procedural purposes was agreed upon.

The most important supranational document to govern the unification of immigration policies (including the policies on refugees) in the coming years seems to be the Amsterdam Treaty. Signed on October 2, 1997, it entered into force on May 1, 1999. Its provisions on migration and asylum have become European law in May 2004. Title IIIa of the Treaty concerns visas, asylum, immigration and other policies related to free movement of persons. Pursuant to Art. 73k, the following shall be adopted within a period of five years after the entry into force of the Treaty:

1. measures on asylum, in accordance with the Geneva Convention of 1951 and the Protocol of 1967 within the following areas:
    – criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country;
    – minimum standards on the reception of asylum seekers;
    – minimum standards with respect to the qualification of nationals of third countries as refugees;
    – minimum standards on procedures in Member States for granting or withdrawing refugee status;
2. measures on refugees and displaced persons within the following areas:
    – minimum standards for giving temporary protection to displaced persons from third countries;
    – promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;
3. measures on immigration policy within the following areas:
    – conditions of entry and residence, and standards on procedures for the issue by Member States of long term visas and residence permits;
    – illegal immigration and illegal residence.[2]

Until then, decisions were taken on an intergovernmental level. In accordance with the Treaty, the European Parliament was given the prerogative to be consulted on matters of the common policy, and the European Court of Justice was designated as the court of final appeal. From May 2004, work on the common asylum policy has been passed on to the Council of Ministers of the European Union.

---

[2] For details see the Treaty of Amsterdam, Title IIIa, Article 73k, EU Official Journal C 340 (10/11/1997).

Before May 2004, the matters of immigration policy, including asylum policy, were mainly handled by the European Commission, whose proposals were consulted with the Economic and Social Committee. In accordance with the Committee's recommendations for the Council of the European Union and the European Parliament, the common immigration policy will have to take into account the conclusions of the European summit at Tampere (1999), where it was decided that the common immigration policy should be based on the norms of the Geneva Convention and the principle of *non-refoulement*. (Besides, The Charter of Fundamental Rights of the European Union, adopted in December 2000, refers to matters of asylum in two articles: Art. 18 guarantees that the provisions of the Geneva Convention and the Additional Protocol will be respected; Art. 19 offers protection against arbitrary removal, expulsion or extradition.) The stress is on the assurance of an equitable asylum procedure, based on common standards.

5. New Policy on Asylum and Immigration: Towards 'Fortress Europe'?

The end of the cold war resulted in what is called a 'new approach' (Chimni 1997: 369) to the problems of immigration and asylum among all Western European countries, which was a reaction to the dynamic increase in migration volumes. It is assumed that the new immigration and asylum policy was initiated in 1991–2, when the number of potential political refugees significantly increased, as a result of which Western European countries introduced new, far more restrictive regulations and legal norms pertaining to the residence of foreigners. The increased numbers of migrants were caused by the following factors:

First, the authoritarian systems in Central and Eastern Europe collapsed and passport regulations were liberalized. Until the late 1980s, the countries of this region pursued a restrictive policy on emigration which efficiently hindered the movement of refugees to Western Europe. The numbers of those who did move out, for political, but frequently also economic reasons, were not large enough to strain in any way the absorption capacity of the recipient countries. Besides, there existed a strong political and propaganda imperative to grant the migrants refugee status on an almost automatic basis.

Second, the disintegration of the Federal Republic of Yugoslavia in 1991 led to a war. From that time until the end of the century, the Balkans were a constant supply of refugees who, in view of the geographic proximity of their native lands, had easy access to Western Europe.

Third, the progress of civilization and technology made long-distance travel more affordable. Thanks to easier access to information, migrants had better knowledge about possible target countries, which influenced their choice of destinations. Air travel was now available not only to the richest, but also to the less affluent. The era had come of 'jet refugees' – inhabitants of developing countries who started to arrive in western states by air on a mass scale.

The largest wave of asylum seekers engulfed Germany, where 438,190 asylum applications were filed in 1992. Currently, the favourite destination is Great Britain, with 84,130 applications in 2002 (IND 2003).

The numbers of asylum seekers in 1989–98 are presented in the table below:

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
EU	282,860	388,220	484,090	667,770	510,780	300,340	263,360	226,120	242,710	291,220
Germany	121,320	193,060	256,110	438,190	322,610	127,210	127,940	116,370	104,350	98,640

Source: Refugees and Others of Concern to UNHCR – 1998 Statistical Overview, (www.unhcr.ch)

5.1 New Policy

The term 'new immigration policy' denotes a common tendency to make national policies more restrictive. According to Andrew Shacknove (1993), it has brought about three trends, comprising:
- greater sophistication of administrative measures;
- expansion of the bureaucratic apparatus promoting the standardization of procedures;
- a containment policy aiming to prevent refugees from arriving in the territory of the target country, while calling into question the institution of asylum itself.

The first of these trends involves the use of modern technologies by the governments, both for data collection and processing and for operational tasks, such as border patrolling. The second consists in creating a framework for the implementation of programs whereby the government sets out the asylum policy without regard for the actual needs of potential refugees and in conflict with some of the norms embodied in the international treaties. An example is provided by the quotas of refugees to be admitted in a specific period. Shacknove points out that such measures mean less tolerance for unexpected and 'non-standard' inflows of refugees. The third trend comprises the attempts of developed countries to stop the flight of refugees from the direct vicinity of conflicts by measures intended to ensure security in the regions in question, an approach labelled 'internalisation' by Joly (1996: 75). The office of the UN High Commissioner for Refugees identified, in its publication on *The State of the World's Refugees: Fifty Years of Humanitarian Action*, four components of the new asylum policy. The first one is deterrence per se, blocking the asylum seekers' physical access to Europe by way of visa regulations or financial sanctions on carriers who fail to observe the immigration procedures. The second involves instruments to deflect migrant streams by shifting the responsibility onto third countries. This can be exemplified by the notion of 'safe countries'. The third consists in attempts to narrow down the definition of a refugee in line with the Geneva Convention and to create forms of a 'substitutive status'. The fourth is connected with 'non-preferential treatment' which may even amount to intimidation of potential refugees.

It appears that the main elements determining the shape of the new immigration policy include:
- asylum procedures;
- deterrence regulations;
- reliance on the concept of a 'safe country';
- the introduction of a 'substitutive status';
- reliance on the concept of 'safety zones'.

The early 1990s saw a number of international initiatives connected with the changing refugee regime. In Europe, the initiatives to make changes in this area proceed from three main sources. The Council of Europe undertook consultations on asylum arrangements in connection with the developments in Central and Eastern Europe. CEFTA countries presented their views at the forum of the Organization for Security and Co-operation in Europe (OSCE, formerly CSCE). However, OSCE resolutions are not legally binding and merely represent political declarations. The third and most important decision-making centre was the European Economic Community and its successor, the European Union. The resolution of the European Parliament concerning the main principles of the European policy on refugees (1994) advocated an equitable division of responsibility for refugees. Thus a system of limits was proposed, based on the area, population and GDP of particular EU countries, which were assigned corresponding indicators: Germany 21, France 19, Italy 15, Great Britain 14. The respective figures proposed for the smallest countries were as follows: Portugal 2, Denmark 1,

Luxemburg 0.1 (Suhrke 1998a: 410). Thus, for every refugee admission in Denmark, there would be 21 admissions in Germany.

When defining new national policies on immigration and asylum, most Western European countries accelerated the procedures for the acquisition of refugee status, but at the same time tightened up the criteria for granting such a status.[3] The concept of a 'manifestly unfounded claim' has been frequently invoked to reduce the influx of asylum seekers. Persons whose applications have been found to be manifestly unfounded undergo accelerated or simplified verification procedures (among other countries, in Austria, Belgium, Switzerland) or, in some cases, are immediately expelled. In Austria, an appeal does not suspend deportation. In Denmark and Great Britain, immigration officers have been given an extensive scope of competence. Persons considered to pose a threat started to be detained (in particular, in Great Britain and the Netherlands). Regulations aiming at deterrence and temporary protection have been promulgated; the concept of a 'safe country' has often been invoked; attempts have also been made to use safety zones as a means to curb the influx of migrants.

5.2 Deterrence Regulations

Visas have become the most effective deterrence means to stop the influx of potential refugees. In combination with fines for carriers, they provide a workable way to keep out asylum seekers. Persons with a low economic status, and thus also potential refugees (it should be borne in mind that economic emigrants all too often invoke the argument of political persecution to gain admission to the country of their choice) had no chance to obtain a visa and hence even to start a journey at the end of which they could submit an asylum application. Besides, carriers were punished for taking aboard people without the required documents.

In the 1980s, Great Britain introduced visas for the nationals of some Commonwealth states. Other Western European states took similar steps vis-à-vis some countries. Currently, the European Union requires visas from the citizens of several dozen countries.

Penalties imposed on carriers became another very important instrument for the control of the influx of refugees. As this measure was introduced, airlines, shipping lines, bus and railroad companies became the entity responsible for the preliminary screening of prospective immigrants. This technique is especially widely used by Great Britain, which already in 1987 promulgated the Immigration (Carrier's Liability) Act (Layton-Henry 1994: 277).

5.3 The Concept of a 'Safe Country'

As the national regulations incorporated the concept of a 'safe country', that is, one free from persecution, more categories of potential refugees became rejected without a verification process. It was, namely, decided that the nationals of such countries have no grounds whatsoever to apply for asylum.

However, the problem emerged from the very outset of how to delineate and define the concept in question (some commentators indicate the need to distinguish between a 'safe third country' and a 'safe country of origin'). Although the *Report from Immigration Ministers to the European Council Meeting in Maastricht* states that a safe country is one 'which can be clearly shown, in an objective and verifiable way, normally not to generate refugees [...] and that circumstances which might in the past have justified recourse to the 1951 Convention have ceased to exist' (cited in Hailbronner 1993: 57), each state has been using a definition of

---

[3] Germany (1992), Great Britain (1993), Switzerland (1990), the Netherlands (1991), Belgium (1991), Austria (1992).

its own, interpreting the concept at will. As a result, in 1990 Switzerland pronounced Algeria a safe country, and in the following year Germany did the same with respect to Nigeria.

Hailbronner (1993) concludes that the adoption of the safe country concept created a conflict as defined by the Geneva Convention, because the fact that a person has attained a certain level of security in a third country does not preclude that person's eligibility for refugee status. However, it was practically impossible for such individuals to obtain this status in Western Europe in the 1990s, and the residents of safe countries were barred from the asylum procedure. What is more, the introduction of the safe country concept went against the fundamental principle governing the asylum procedures, namely, that every application should be given individual consideration. Such an individualized approach to candidates precluded a decision based solely on the applicant's point of departure, whereas the new procedure did allow an application to be rejected without a preliminary analysis. Although, in theory, the incorporation of the notion of a safe country into the national laws did not eliminate the possibility of determining an applicant's status on a case-by-case basis, in practice, a person arriving from a safe country had no chance to be granted asylum. In Denmark, for instance, a list of safe countries is compiled by the Immigration Office, and applications originating from these countries are not accepted at all. In the Netherlands, an application from a candidate coming from a safe country is considered to be 'manifestly unfounded'. The same principle applies in Belgium to candidates who have spent at least three months in a safe country.

As Hailbronner (1993) further argues, the viability of this concept requires two conditions to be met. First, measures taken by recipient states must comply with the international conventions and agreements. Second, every country must adjust its legal regulations so as to create a separate and fast verification path.

The notion of a safe country has been invoked in international bilateral agreements, especially those on readmission (of 'illegal immigrants'), concluded between neighbouring states. Western European countries have created in this way an additional barrier obstructing access to the 'fortress'.

5.4 Temporary Protection as a Substitutive Status

The concept of temporary asylum was included in the Conclusions of the UNHCR Executive Committee No. 19 (XXXI) of 1980 and No. 22 (XXXII) of 1981.

In July 1992, the EU states decided in London to apply 'temporary protection' to refugees from Yugoslavia. The Union adopted this concept as an immigration policy instrument in December 1992. This decision was caused by the recurring waves of refugees from the Balkans, which the authorities of the member states found difficult to handle. In accordance with the adopted definition, to qualify for temporary protection, applicants must be coming directly from an area of combat, be currently in the territory of the European Union, and unable to return home because of the conflict and human rights violations (Joly 1996). The governments of the Twelve explained that this arrangement could benefit a broader group of people than those who met the actual definition of refugee. Temporary protection might also be extended to prisoners of war, persons in need of medical assistance which they could not receive elsewhere, victims of sexual crimes and other persons in direct peril of their lives.

Temporary protection was seen as an intermediate stage en route to a long-term solution. This idea, although ostensibly promised security to the possibly broadest group, had many shortcomings. The first was the very rationale behind the introduction of such a mechanism. It was not motivated by humanitarian concerns, but, rather, by the need for additional instruments to handle the influx of refugees. Temporary protection would also be cheaper (temporary refugees would receive social security benefits for a limited time only) and

guarantee, in most cases, the return of the refugees to their native country or their ultimate departure and settlement in a third country. Second, temporary protection contradicts the guiding principle of the Geneva Convention (1951) and New York Protocol (1967), as it involves involuntary expulsion. Besides, the UNHCR found that many persons to whom 'temporary protection' was accorded were eligible for the refugee status under the Convention. Third, this arrangement placed some categories of persons in a long-term institutional vacuum. As the UNHCR and the concerned NGOs were quick to realize, temporary protection boiled down in practice to a failure to grant refugee status even to fully qualified applicants. The outcome of this policy was the accumulation of second-class refugees, deprived of constitutional rights. Soon the problems of children and the reunion of families emerged: how can families be reunited, if the person staying in the territory of the Union does not have refugee status and faces expulsion, pending the political developments in the home country? Children proved to be an even more substantial issue. The EU authorities underestimated the duration of many conflicts, including those in the Balkans. Meanwhile, the children of 'temporary refugees' grew up in EU countries, which, for many of them, represented the only familiar civilization and culture. Should they too be expelled from the only native land they ever knew?

5.5 Safety Zones

The concept of safety zones is yet another element of the 'new approach' to migration issues. The idea behind the 'compulsory alternative' was to stop potential refugees before they reach Western countries. It was also claimed that the formation of safety zones implies the existence of safe regions within a given country which, therefore, might be considered to meet the definition of a 'safe country', with all the consequences of this fact.

The concept of safety zones is an old one. In medieval Europe, this role was played by churches. In 1929, the idea was put forward to create safe havens for civilians ('Geneva localities') and in 1934, the proposal was made to identify 'sanitary cities and localities' (Monaco Draft Convention) and then 'safe towns' (Landgren 1995). After the Second World War, this concept was incorporated in various forms into the Geneva Conventions of 1949. Art. 23 (First Convention) pertains to the protection of the wounded and sick,[4] Art. 14 (Fourth Convention) extends protection to children under fifteen, expectant mothers and mothers of small children, while Art. 15 (Fourth Convention) concerns neutralized zones and states the need for their establishment in areas of armed conflict.[5] This concept is also invoked by the First Additional Protocol (1977), which states that protection should be given to the entire civilian population in areas of hostilities and defines the criteria a protection zone should meet.[6]

A safety zone is construed today as a designated area enjoying a special status and special protection, where persons who have fled form an area of conflict may take shelter. Safety zones seemed useful mainly in internal, as opposed to international, conflicts. Since the end of the cold war, most armed conflicts in the world have been civil wars. Furthermore, the proportions of casualties have reversed: in the early 20th century, 90 percent of victims of armed conflicts were soldiers and members of paramilitary forces, that is, physical combatants, whereas now 90 percent of victims are civilians. As a result, the need to increase the security of civilians was felt and the concept of safety zones came to be seen in the early 1990s as a very interesting proposal to remedy the hardships of the population in war areas. But the decisive factor behind the formation of such zones was the need to prevent potential

---

[4] Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
[5] Convention relating to the Protection of Civilian Persons in Time of War.
[6] For details see Landgren 1995.

refugees from moving to Western Europe and applying for political asylum. The West's support for safety zones was motivated by the pragmatic intent to limit the influx of refugees, rather than by humanitarian considerations and the desire to help those in need. The formation of safety zones was part of the new immigration policy.

In the 1990s, several structures were established which might be termed safety zones. All of them were intended to protect civilians. In North Iraq, a 'no-fly zone' was created. In Sri Lanka, so-called 'open relief centres' were established in Madhu Church (Mannar district). The 'Operation Turquoise' in Rwanda involved the formation of the first 'safe humanitarian zone' in the Gikongoro-Cyangugu-Kibuye triangle. In Europe, several safety zones were set up in Bosnia-Herzegovina by the Security Council resolutions of April 19 and May 6, 1993. Resolution No. 819 established such a zone in Srebrenica and Resolution No. 824 in Sarajevo, Bihac, Tuzla, Zepa and Gorazde. This decision was caused by the mounting hostilities and the increasingly desperate situation of the Muslim population.

The safety zones failed to fulfil their mission of providing shelter to the inhabitants and did not cause any significant improvement in regions where they existed. In Srebrenica, 6,000 Muslims fell victim to genocide perpetrated by the Serbian militia, abetted by the inaction of the UN soldiers.

6. Conclusion

For the last dozen years European states – independently and cooperatively – have been erecting walls which are supposed to prevent unwanted migration flows coming from the developing world. Harmonising and unifying policy on immigration and asylum within the European Union as well as restricting national policy targeted at potential refugees are clear signs that the rulers of western Europe fear waves of foreigners who might be coming to their countries in search of higher standards of life, and more accessible development opportunities. Indeed, due to violent conflicts, economic and political crises and natural disasters, in various corners of the developing world, people are willing to embark on a journey to an elusive promised land.

Although an attractive tool to temporarily satisfying the western societies, building "Fortress Europe" hardly seems a permanent solution. The only way to solve the problem is by addressing its root causes. Without a long-term policy of development and assistance together with supporting democracy and human rights one can hardly expect that the flows of migrants will dry out. Even if the walls are made of solid brick.

References

CHIMNI, B.S. (1998) 'The Geopolitics of Refugee Studies: A View from the South' *International Journal of Refugee Law,* 11(4): 350-374.

ESSER, H. and KORTE, H. (1985) 'Federal Republic of Germany' in Hammar, T. (ed.) *European Immigration Policy: A Comparative Study.*

HAILBRONNER, K. (1993) 'The Concept of 'Safe Country' and Expeditious Asylum Procedures: A Western European Perspective' *International Journal of Refugee Law,* 5(1): 31-65.

JOLY, D. (1996) *Haven or Hell? Asylum Policies and Refugees in Europe,* Centre for Research in Ethnic Relations, University of Warwick.

JOPPKE, Ch. (1998) 'Asylum and State Sovereignty: A Comparison of the US, Germany and Britain, in Joppke, Ch. (ed.) *Challenge to the Nation-State: Immigration in Western Europe and the United States,* Oxford University Press.

LAMBERT, H. (1995) 'Asylum-seekers, refugees and the European Union: case studies of France and the UK' in Miles, R. *et al. Migration and European Integration: The Dynamics of Inclusion and Exclusion,* Pinter Publishers Ltd, London.

LANDGREN, K. (1995) 'Safety Zones and International Protection' A Dark Grey Area' *International Journal of Refugee Law,* 7(3): 436-458.

LAYTON-HENRY, Z. (1994) 'Britain: The Would-be Zero-Immigration Country' in Cornelius, W. *et al. Controlling Immigration A Global Perspective,* Stanford University Press.

MARTIN, P.L. (1994) 'Germany: Reluctant Land of Immigration' in Cornelius, W. *et al. Controlling Immigration A Global Perspective,* Stanford University Press.

NIESSEN, J. (1996) *The Developing Immigration and Asylum Policies of the European Union: Adopted Conventions, Resolutions, Recommendations, Decisions and Conclusions.* Kluwer Law International.

SHACKNOVE, A. (1993) 'From Asylum to Containment' *International Journal of Refugee Law,* 5(4): 516-533.

SUHRKE, A. (1998a) 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action' *Journal of Refugee Studies,* 11(4): 396-415.

SUHRKE, A. (1998b) 'Uncertain Globalization: Refugee Movements in the Second Half of the Twentieth Century' in Gungwu, W. (ed.) *Global History and Migrations,* Westview Press.

SZONERT, M. (1999) 'Postępowanie wobec cudzoziemców ubiegających się o nadanie status uchodźcy w Polsce a acquis communautaire Unii Europejskiej w dziedzinie azylu' w Lozinski, S. and Milewski J.J. (eds.) *Do stołu dla zamożnych: ruchy migracyjne w Afryce oraz ich znaczenie dla Polski.* IKP, Warsaw.

UNHCR (2000) *The State of the World's Refugees: Fifty Years of Humanitarian Action,* UNHCR.

WEINER, M. (1995) *The Global Migration Crisis: Challenge to States and to Human Rights,* Addison-Wesley Pub Co.

ZOLBERG, A.R. (1997) 'Global Movements, Global Walls: Responses to Migration, 1885-1925' in Gungwu, W. (ed.) *Global History and Migrations,* Westview Press.

Refugees and others of concern to UNHCR – 1998 statistical overview, <www.unhcr.ch>

Internet resources

Cards Assistance Programme to the Western Balkans: Regional Strategy Paper 2002 – 2006 <http://europa.eu.int/comm/external_relations/see/docs/cards/sp02_06.pdf>
Euro-Med Partnership – Regional Strategy Paper

<http://europa.eu.int/comm/external_relations/euromed/rsp/rsp02_06.pdf>
European Initiative for Democracy and Human Rights programming Documents 2002 – 2004
<http://europa.eu.int/comm/europeaid/projects/eidhr/pdf/programming_document.pdf>
Final Report: Evaluation of the MEDA Democracy Programme 1996-1998
<http://europa.eu.int/comm/europeaid/evaluation/reports/med/951460.pdf>
Guide to TACIS small project programmes and other support structures 2000
<http://europa.eu.int/comm/external_relations/ceeca/tacis/small_project2000.pdf>
IND (2003) 'Asylum Statistics, United Kingdom 2002', United Kingdom's Immigration and Nationality Directorate, <http://www.homeoffice.gov.uk/rds/pdfs2/hosb803.pdf>
Treaty of Amsterdam
<http://europa.eu.int/abc/obj/amst/en/>
Treaty on European Union
<http://europa.eu.int/en/record/mt/title6.html>
UNHCR (1998) Refugees and Others of Concern to UNHCR – 1998 Statistical Overview,